



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Jane Leiderman, Treasurer
Applegate for Congress
16633 Ventura Blvd., #1008
Encino, CA 91436

MAR 19 2018

RE: MUR 7223 / RR 17L-23
Applegate for Congress and Jane Leiderman
in her official capacity as treasurer
Douglas L. Applegate

Dear Ms. Leiderman:

On March 20, 2017, the Federal Election Commission ("Commission") notified Applegate for Congress and you in your official capacity as treasurer ("the Committee"), and Douglas L. Applegate of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and provided you with a copy of the complaint. In addition, during the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that the Committee may have violated the Act, and that information was referred by the Commission's Reports Analysis Division ("RAD") to the Office of the General Counsel ("OGC").

After reviewing the allegations contained in the complaint, the information referred by RAD to OGC, the Committee's response, and publicly available information, the Commission on March 6, 2018, found reason to believe that the Committee violated 52 U.S.C. § 30104(b), and found no reason to believe that Douglas L. Applegate personally violated the Act or Commission regulations as alleged. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized OGC to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law. Enclosed is a conciliation agreement for your consideration

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Applegate for Congress and Jane Leiderman MUR 7223 / RR 17L-23
4 in her official capacity as treasurer
5 Douglas L. Applegate
6

7 **I. GENERATION OF MATTER**

8 Matter under review (“MUR”) 7223 was generated by a complaint filed with the Federal
9 Election Commission (“Commission”) by James V. Lacy, *see* 52 U.S.C. § 30109(a)(1). Shortly
10 after the Complaint was filed, AFC amended its 2016 pre- and post-general election reports to
11 disclose an additional \$373,530 in disbursements. RAD Referral (“RR”) 17L-23 was generated
12 by information ascertained by the Commission in the normal course of carrying out its
13 supervisory responsibilities, *see* 52 U.S.C. § 30109(a)(2).¹

14 The Complaint alleges that Applegate for Congress and Jane Leiderman in her official
15 capacity as treasurer (“AFC”) and Douglas Applegate, a federal candidate and AFC’s original
16 treasurer, knowingly misreported disbursement and cash-on-hand figures in disclosure reports
17 filed with the Commission.² AFC and Applegate acknowledge filing erroneous disclosure
18 reports but assign responsibility for the errors to their hired consultant, and assert that they
19 remedied the problem by hiring a new consultant, filing amended disclosure reports, and
20 adopting stronger compliance policies. Based on the available record, the Commission has
21 determined to open a MUR in RAD Referral 17L-23, merge that matter with MUR 7223, and
22 find reason to believe that AFC violated 52 U.S.C. § 30104(b). However, because there is an
23 insufficient factual basis to infer that Applegate knowingly or recklessly filed false disclosure

¹ See RAD Referral 17L-23 (Aug. 4, 2017) (“Referral”), incorporated herein by reference.

² Compl. at 1-2 (Mar. 13, 2017).

1 reports, the Commission finds no reason to believe that Applegate personally violated the law as
2 alleged.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 Douglas Applegate was a candidate for California's 49th Congressional District during
6 the 2016 election cycle. Applegate for Congress, his principal campaign committee, registered
7 with the Commission on July 20, 2015, and Applegate served as its treasurer until December 28,
8 2016, when Jennifer May was appointed treasurer.³ AFC filed its 2016 12-Day Pre-General
9 Election Report on October 27, 2016, reporting total disbursements of \$350,241.⁴ AFC filed its
10 2016 30-Day Post-General Election Report on December 8, 2016, reporting total disbursements
11 of \$660,628 and an ending cash-on-hand balance of \$434,104.⁵ However, in its next report, the
12 2016 Year-End Report, AFC disclosed a beginning cash-on-hand balance of only \$57,696.⁶ This
13 discrepancy prompted RAD to send AFC a Request for Additional Information ("RFAI") on
14 March 9, 2017.⁷ The Complaint in MUR 7223 was filed on March 13, 2017.

³ Applegate was AFC's treasurer at the time it filed the two disclosure reports at issue in this matter. See AFC Statement of Org. (July 20, 2015); AFC Amended Statement of Org. (Dec. 28, 2016). May served as treasurer from December 28, 2016, until May 30, 2017, when AFC named Jane Leiderman treasurer. See AFC Amended Statement of Org. (May 30, 2017).

⁴ AFC 2016 12-Day Pre-General Election Rpt. at 2 (Oct. 27, 2016).

⁵ AFC 2016 30-Day Post-General Election Rpt. at 2, 5 (Dec. 8, 2016).

⁶ AFC 2016 Year-End Rpt. at 4 (Jan. 31, 2017).

⁷ Although RAD sent AFC RFAs relating to its prior disclosure reports, those inquiries were not germane to the issues raised in this matter.

1 The Complaint alleges that AFC and Applegate knowingly filed false disclosure reports
2 and failed to respond to Commission RFAs seeking to correct the public record.⁸ The
3 Complaint alleges that these errors were made knowingly — thereby subjecting Applegate to
4 personal liability as AFC’s treasurer — because “Applegate cannot credibly claim that he was
5 not aware that the reports he was filing contained wrong and misleading information[.]”⁹

6 Respondents acknowledge making erroneous disclosures, but claim that Crummitt &
7 Associates (“Crummitt”), the consulting firm that AFC hired to handle its accounting and
8 recordkeeping tasks, failed to enter all of AFC’s disbursements into its disclosure database, and
9 did not reconcile AFC’s disbursements with its bank statements.¹⁰ AFC claims that because it
10 was dissatisfied with Crummitt’s performance, it hired a new firm, Next Level Partners, after the
11 2016 election.¹¹ However, according to AFC, because Crummitt did not provide access to the
12 disclosure database software it had used to keep track of AFC’s financial information, Next
13 Level was forced to recreate the database, and during that process, some additional
14 disbursements were omitted from the 2016 30-Day Post-General Election Report.¹²

15 After conducting an internal audit, AFC amended its 2016 12-Day Pre-General Election
16 Report on March 17, 2017, to disclose additional disbursements of \$95,094.32, and amended its
17 2016 30-Day Post-General Election Report on March 22, 2017, to disclose additional

⁸ Compl. at 1-2.

⁹ Compl. at 2; *see* 11 C.F.R. § 104.14(d).

¹⁰ Resp. to MUR 7223 at 1-2 (Apr. 13, 2017).

¹¹ *Id.*

¹² *Id.*

1 disbursements of \$278,435.82.¹³ Based on AFC's amended reports disclosing \$373,530.14 in
2 increased activity, RAD referred AFC to OGC for further review.¹⁴

3 **B. Legal Analysis**

4 The Federal Election Campaign Act of 1971, as amended ("Act"), requires political
5 committee treasurers to file reports of receipts and disbursements in accordance with the
6 provisions of 52 U.S.C. § 30104.¹⁵ These reports must include the amount and nature of these
7 receipts and disbursements.¹⁶ Here, AFC did not comply with the Act's reporting requirements
8 when it failed to disclose disbursements of \$95,094.32 on its 2016 12-Day Pre-General Election
9 Report and disbursements of \$278,435.82 on its 2016 30-Day Post-General Election Report —
10 an aggregate total of \$373,530.14 in increased activity.

11 AFC acknowledges its reporting errors but argues for leniency because of Crummitt's
12 negligence, which AFC claims to have promptly remedied when it hired a new consultant, filed
13 amended disclosure reports, and "revised its internal procedures to require that its reports are
14 reconciled by both its compliance consultant and by [AFC] staff prior to filing."¹⁷ However, the
15 Act imposes responsibility on political committees and their treasurers to certify the accuracy of
16 the disclosure information they provide to the Commission and, ultimately, the public.¹⁸ AFC

¹³ *Id.*; see AFC Amended 2016 12-Day Pre-General Election Rpt. at 2 (Mar. 17, 2017); AFC Amended 2016 30-Day Post-General Election Rpt. at 2, 5 (Mar. 22, 2017).

¹⁴ See Referral.

¹⁵ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁶ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

¹⁷ Resp. to MUR 7223 at 2-3.

¹⁸ See Factual and Legal Analysis at 5, MUR 6979 (Republican Majority Campaign) ("Ultimately, the Committee was responsible for ensuring timely and accurate filing of reports with the Commission, and [its treasurer] should have made sure the report he filed was accurate.").

1 cannot avoid that responsibility by pointing to its consultant's performance. As such, the
2 Commission finds reason to believe that AFC violated 52 U.S.C. § 30104(b).

3 Nevertheless, the available record does not reasonably support the conclusion that AFC's
4 treasurer, Applegate, knowingly or recklessly filed false disclosure reports. The Commission's
5 Treasurer Policy provides that a treasurer may, in some circumstances, be held personally liable
6 for violations of the Act or Commission regulations.¹⁹ In prior matters, the Commission has held
7 treasurers personally liable for knowingly and willfully violating the law in an effort to conceal
8 the deliberate misappropriation of committee funds.²⁰ The Commission has also held a treasurer
9 personally liable for recklessly failing to fulfill his or her duties as treasurer where the available
10 information indicated a systemic lack of diligence.²¹ In another case, however, the Commission
11 declined to hold a treasurer personally liable for relying on more experienced professionals to
12 prepare disclosure information on behalf of a political committee.²²

¹⁹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005) (“[T]he Commission intends to consider a treasurer the subject of an enforcement proceeding in his or her personal capacity only when available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations.”).

²⁰ See, e.g., MUR 6867 (Robert Telthorst); MUR 6768 (Debra Doherty); MUR 6539 (Joe Green); MUR 6475 (Andrew McCrosson); MUR 6179 (Christopher Ward); MUR 5971 (Jennifer Adams). A violation is knowing and willful where the unlawful “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. 12197, 12199 (May 3, 1976); see also *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013).

²¹ See, e.g., Factual and Legal Analysis at 2–4, MUR 5652 (Susan Arceneaux) (finding treasurer, an employee of a professional compliance firm, personally liable for recklessly failing to fulfill her duties when the political committee she served violated the Act by accepting 65 corporate contributions totaling \$64,600, 541 excessive contributions totaling \$552,773, and \$100,000 from the proceeds of an unsecured bank loan; understating total receipts by \$693,576 and total disbursements by \$960,876; overstating cash on hand by \$281,800; failing to itemize contributions from individuals and political committees, as well as \$302,000 in joint fundraising proceeds; and failing to file 48-hour notices for 77 contributions totaling \$106,100).

²² See, e.g., Factual and Legal Analysis at 5, MUR 6889 (Michael Delk) (dismissing allegations against a treasurer in his personal capacity partly because the treasurer was “inexperienced” and “relied on the erroneous guidance of politically experienced, professional [political committee] staff”).

